

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RONNIE BANKS (#292796),

Plaintiff,

CASE NO. 2:13-CV-10199

JUDGE BERNARD A. FRIEDMAN

MAGISTRATE JUDGE PAUL J. KOMIVES

v.

DONALD TRAMMELL,
ANGELA DYE-SHELMAN,
PAUL OPARKA,
JEWELL DALEY,
VICKI DORROUGH and
LAVERNE DESHEILDS,

Defendants,

**ORDER DEEMING MOOT PLAINTIFF'S JULY 21, 2014 MOTION (Doc. Ent. 47) TO
STRIKE DEFENDANT LAVERNE DESHIELDS'S AFFIDAVIT (Doc. Ent. 44-8)**

A. Background

Ronnie Banks (#292796) is currently incarcerated at the MDOC's Earnest C. Brooks Correctional Facility (LRF) in Muskegon Heights, Michigan. On January 17, 2013, while incarcerated at the Muskegon Correctional Facility (MCF) in Muskegon, Michigan, Banks filed the instant pro se lawsuit against six (6) defendants, each of whom was allegedly employed by the MDOC at the Ryan Correctional Facility (RRF) in Detroit, Michigan. Doc. Ent. 1 ¶¶ 6-12.¹

On February 24, 2014, the six (6) defendants filed a combined answer. Doc. Ent. 42.

B. Pending Dispositive Motion

¹Judge Friedman has referred this case to me for all pretrial matters. Doc. Ent. 8 & 24; *see also* Doc. Ent. 10.

On June 23, 2014, defendants Trammell, Oparka, Dye-Shelman, Daley, Dorrough, and DeShields filed a Fed. R. Civ. P. 56(a) motion for summary judgment. Doc. Ent. 44. Among the attachments to this motion is the unsigned, unnotarized affidavit of LaVerne DeShields. Doc. Ent. 44-8 (Exhibit G).

Plaintiff's response to this motion was due on July 23, 2014. Doc. Ent. 45. On July 21, 2014, plaintiff filed a response (Doc. Ent. 46), a declaration (Doc. Ent. 48), a statement of disputed factual issues (Doc. Ent. 49) and an index of exhibits (Doc. Ent. 50).

Defendants filed a reply on July 31, 2014 (Doc. Ent. 52), along with a signed and notarized copy of DeShields's affidavit (Doc. Ent. 53).

C. Plaintiff's Motion to Strike

On July 21, 2014, plaintiff filed a motion (Doc. Ent. 47) to strike defendant LaVerne DeShields' affidavit (Doc. Ent. 44-8) "for failing to comply with the requirements for an affidavit." Among other things, plaintiff points out that it is not properly certified, is unsigned and is unsworn. In other words, plaintiff claims, it is not notarized; and it does not comply with 28 U.S.C. § 1746 ("Unsworn declarations under penalty of perjury").

Defendants filed a response on July 31, 2014 (Doc. Ent. 55), attached to which is a copy of DeShields's July 30, 2014 signed and notarized affidavit. *Compare* Doc. Ent. 44-8 at 1-4, Doc. Ent. 55-2 at 2-5, Doc. Ent. 53 at 2-5.

Thus, the defect complained of in plaintiff's July 21, 2014 motion (Doc. Ent. 47) has been cured.

D. Order

Accordingly, plaintiff's July 21, 2014 motion (Doc. Ent. 47) to strike defendant LaVerne DeShields's affidavit (Doc. Ent. 44-8) is DEEMED MOOT.

Defendants' pending motion for summary judgment (Doc. Ent. 44) will be addressed in a report and recommendation under separate cover.

IT IS SO ORDERED.

The attention of the parties is drawn to Fed. R. Civ. P. 72(a), which provides a period of fourteen (14) days from the date of service of a copy of this order within which to file an appeal for consideration by the district judge under 28 U.S.C. § 636(b)(1).

Dated: September 19, 2014

s/Paul J. Komives
PAUL J. KOMIVES
UNITED STATES MAGISTRATE JUDGE

I hereby certify that a copy of the foregoing document was sent to parties of record on September 22, 2014, electronically and/or by U.S. Mail.

s/Michael Williams
Case Manager for the
Honorable Paul J. Komives